

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF)
THE VANGUARD GROUP, INC. ET. AL.)
PURSUANT TO 26 *DEL. C.* § 215 PERTAINING) PSC DOCKET NO. 20-0731
TO THE DISCLAIMER OF CONTROL OF)
CERTAIN PUBLIC UTILITIES)
(FILED NOVEMBER 4, 2020))

ORDER NO. 9691

AND NOW, this 2nd day of December 2020, the Delaware Public Service Commission (“Commission”) determines and orders the following:

WHEREAS, on November 4, 2020, pursuant to 26 *Del. C.* § 215(b), The Vanguard Group, Inc., on its own behalf and on behalf of its related entities (collectively, “Applicant” or “Vanguard”), filed a “Disclaimer of Control” application seeking: (1) a Commission determination that direct or indirect ownership by various Vanguard-advised funds (collectively, “Vanguard Funds” and, individually, “Vanguard Fund”) of up to 20% of the voting securities of any one of ten identified public utilities¹ (collectively, “Identified Utilities” and, individually, “Identified Utility”) or up to 10% of the voting securities of an Identified Utility by an individual Vanguard Fund (“Proposed Ownership”) does not constitute “control” of such utility by the Applicant under 26 *Del. C.* § 215(b) or, in the alternative; (2) Commission approval of such Proposed Ownership; and

WHEREAS, 26 *Del. C.* § 215(b) provides that: (1) no entity shall acquire control, either directly or indirectly, of any public utility doing business in Delaware, without having first

¹ The Identified Utilities are Delmarva Power & Light Company, Atlantic Broadband (Delmar), LLC, Comcast Cable Communications, LLC, Verizon Delaware, LLC, Chesapeake Utilities Corporation, Artesian Water Company, Inc., Southern Shores Water Company, SUEZ Water Delaware, Inc., Tidewater Utilities, Inc., and Tidewater Environmental Services, Inc.

obtained the approval of the Commission; (2) control shall be presumed to exist if any such entity, directly or indirectly, owns 10% or more of the voting securities of the public utility; and (3) the presumption of control may be rebutted by a showing that such ownership does not in fact confer control; and

WHEREAS, pursuant to 26 *Del. C.* § 215(h), Commission approval is not required for any transfer of control of public utility companies providing telecommunications services; and

WHEREAS, in its filing, Applicant represented that the Vanguard funds include hundreds of separate funds, each with its own group of investors, portfolios of security, and individual investment mandate, and that many of these funds have at various times acquired and sold, as well as currently hold, publicly traded securities of the Identified Utilities; and

WHEREAS, Applicant also represented that: (1) as of September 30, 2020, only one individual Vanguard Fund owned more than 3% of the voting securities of an Identified Utility² and, in aggregate, the Vanguard Funds own no more than 9% of the voting securities of any of the Identified Utilities; provided, that when aggregated with Vanguard funds that are exclusively managed externally by independent third-party investment advisers (“Externally Advised Funds”), the Vanguard Funds together with such Externally Advised Funds own more than 9% of the voting securities of two of the Identified Utilities;³ (2) its beneficial ownership is in the ordinary course of its business and is for investment purposes only without the purpose of changing or influencing the control of the Identified Utilities, which means that under Securities and Exchange Commission (“SEC”) rules, Applicant is eligible to file an SEC Schedule 13G, rather than a

² Vanguard Total Stock Market Index Fund owns 3.52% of the voting securities of Artesian Resources Corporation, parent company of Artesian Water Company, Inc.

³ The Vanguard Funds when aggregated with the Externally Advised Funds, on an aggregate basis, own 14.36% of the voting securities of Exelon, parent company of Delmarva Power, and 10.62% of Comcast Corporation, parent company of Comcast Cable Communications, LLC.

Schedule 13D for each Identified Utility; (3) there are no material relationships or bases for affiliations between Applicant and the Identified Utilities; (4) none of Applicant's investing clients will hold 10% or more of the Identified Utilities' voting securities; (5) Applicant will not collectively own or hold more than twenty percent of any Identified Utility's voting securities; (6) in 2019 the Federal Energy Regulatory Commission ("FERC") authorized Applicant to acquire not more than 20% of the voting securities of public utilities, with no single client holding 10% or more; (7) with one exception, the FERC authorization was based on the same terms and conditions described by Applicant in its request before this Commission, including that it will be a non-controlling, passive investor;⁴ and

WHEREAS, in its filing, Applicant requests that it not be considered to control or be affiliated with the Identified Utilities because: (1) its beneficial ownership of the Identified Utilities' voting securities is for investment purposes only without the intent or effect of controlling or influencing the conduct of the Identified Utilities; (2) economic ownership of the Identified Utilities' voting shares is dispersed among more than twenty of Applicant's client accounts, which are managed by multiple portfolio managers who make independent investment decisions; (3) Applicant has not sought, nor does it intend, to appoint or have the right to designate any member of the Identified Utilities' board of directors; and (4) Applicant has no material

⁴ The one exception is that, at the time the Applicant sought and obtained the FERC authorization, the Applicant had not yet delegated proxy voting authority to the third-party investment advisers that provide investment advisory services to, and exercise investment discretion on behalf of, certain of the Vanguard funds. According to Applicant, this delegation of proxy voting authority aligned proxy voting authority with investment discretion for the Externally Advised Fund. It placed voting authority in the hands of the external advisers, along with investment discretion, which the external advisers always had for the Externally Advised Funds. Given that the external advisers determine which securities to buy and sell, Vanguard decided that such external advisers should similarly determine how to vote proxies for those securities. As a result, the Applicant's request here is slightly different from the request for FERC approval in that Vanguard's position in this Application is that Externally Advised Funds should not be aggregated with the Vanguard Funds for purposes of calculating the ownership percentages of voting securities in the Identified Utilities. Otherwise this exception has no effect on the Application.

relationships or transactions with the Identified Utilities other than the ownership of the Identified Utilities' voting shares;

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE
OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That pursuant to 26 *Del. C.* § 215(b) and based on the representations as described above, the Commission finds, to the extent required, that Applicant has rebutted the presumption of control and that acquisition of up to 20% of the voting securities of any one of the Identified Utilities by the Vanguard Funds or up to 10% of the voting securities of any one of the Identified Utilities by an individual Vanguard Fund does not in fact confer control of an Identified Utility (nor will the Commission consider the Applicant to be an affiliate of an Identified Utility) so long as all representations and commitments made by Applicant, as outlined above, remain accurate.

2. If Applicant contemplates any change in the facts upon which the Commission makes its finding or intends to modify its SEC or FERC authorizations noted above, then Applicant shall return to the Commission prior to any such change either to seek authority for a change of control under 26 *Del. C.* § 215(b) or to show cause why the proposed change or changes will not alter the rebuttal of the presumption herein. In particular, Applicant shall take no action related to the Identified Utilities that would cause it to be ineligible to file SEC Schedule 13G and would require it instead to file SEC Schedule 13D, without first returning to the Commission for further review under 26 *Del. C.* § 215(b).

3. If Applicant returns to the Commission pursuant to Ordering Paragraph No. 2 above, then Applicant shall notify the affected Identified Utilities in writing simultaneously upon filing its request with the Commission.

4. The Commission reserves the jurisdiction and authority to enter such other or further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman

Joann Conaway, Commissioner

Harold Gray, Commissioner

Manubhai “Mike” Karia, Commissioner

Kim F. Drexler, Commissioner

ATTEST:

Donna Nickerson, Secretary